



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/12/99	Bill No:	SB 1232
Tax:	Special Taxes	Author:	Senate Revenue and Taxation Committee (Chesbro, et al)
Board Position:	Support – Board-sponsored, except §30436	Related Bills:	SB 1231 (SR&T) SB 1302 (SR&T)

BILL SUMMARY:

Among its provisions, this bill contains Board of Equalization-sponsored technical and housekeeping proposals that would do the following:

1. Clarify that CUPA payments made for the previous year are eligible for the generator fee refund. (§25205.9 of the Health and Safety Code)
2. Delete the references to two repealed penalties under the Use Fuel Tax Law. (§8877*)
3. Add references to tobacco products which conform to cigarette tax provisions. (§§30103.5 and 30188)
4. Allow the Board to require reporting periods other than a quarterly basis for tire recycling fees. (§§42886 and 42886.1)
5. Correct a reference to definitions in regards to the childhood lead poisoning prevention fee. (§§43010.1 and 43011.1)
6. Authorize the Board to release otherwise confidential information obtained from a tank operator's supplier to the tank owner responsible for payment of the underground storage tank fee. (§50159)

This bill would also add provisions to authorize the Board to seize cigarettes which violate the restriction on selling "export only" cigarettes in California. (§30436)

* all sections referenced are contained in the Revenue and Taxation Code unless otherwise noted.

Section 25205.9 of the Health and Safety Code

Current Law:

Under existing law, Section 25205.5 of the Hazardous Substances Tax Law imposes a fee on a generator of hazardous waste for each generator site for each calendar year unless the generator has paid a facility fee or received a credit per Section 25205.2(i) for each specific site for the calendar year for which the fee is due.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Under existing law, Section 25205.9 of the Health and Safety Code requires the Department of Toxic Substances Control on or before June 30 of each year to determine if there are surplus funds in the Hazardous Waste Control Account and allocate the surplus, upon appropriation by the Legislature, to pay refunds in the following priority:

1. To pay refunds, as provided in subdivision (h) of Section 25205.5, at an amount not to exceed the local hazardous waste generator inspection fee paid to a Certified Uniform Program Agency (CUPA) in the previous year or the generator fee paid to the state, whichever is less.
2. To pay refunds for hazardous materials recycled, pursuant to subdivision (i) of Section 25205.5, provided that there are sufficient funds available. However, if the generator receives a generator fee refund for the CUPA fee, pursuant to subdivision (h) of Section 25205.5, a refund of the state generator fee for offsite recycling could not exceed the difference between the amount of the generator fee paid and the refund received for having paid a fee to a CUPA.

As currently written, only payments made to a CUPA in the same calendar year for which generator fees are due may be considered when calculating refunds. For CUPA fees due for a calendar year to a local agency, a feepayer usually does not pay the fee until early in the following year. For example, a local fee due for calendar year 1998 could be due in February or March 1999. In that case, the language in the current law would not allow a generator fee credit for a CUPA payment to be claimed in 1999 because the eligible credit for 1998 was not paid IN 1998, but was paid FOR 1998.

Background

The current generator fee refund in Section 25205.9 was added to the statutes effective January 1, 1999 by Senate Bill 2014 (Schiff), Chapter 767, Statutes of 1998. The Environmental Technology Council, a trade association representing commercial hazardous waste management companies, sponsored the bill, among other reasons, in order to restore an offsetting credit against the state generator fee for any local generator fees paid, which were allowed prior to the creation of CUPAs.

Comments:

This proposal would simply correct an apparent drafting error when the CUPA refund provisions were added to Senate Bill 2014 in 1998. By revising the allowable time period that a payment is made from the more restrictive period of being paid “in” the previous calendar year to “for” the previous calendar year, this proposal would reflect the legislative intent of SB 2014, and clarify the CUPA refund provided under existing law. This proposed change would be consistent with the legislative intent of the sponsors of SB 2014 which restored the equivalent of the former credit against the state generator fee for any local generator fees paid, that were allowed prior to the creation of CUPAs.

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Section 8877**Current Law:**

Under existing Use Fuel Tax Law, the Board may relieve the penalty for failure to secure a use fuel tax permit, to make a timely return, or failure to make a timely prepayment if the failure is due to reasonable cause and circumstances beyond the person's control and occurred notwithstanding the exercise of ordinary care. However, the penalties for failure to secure a permit contained in Section 8701 and failure to make a timely prepayment contained in Section 8756.5 were repealed by Chapter 555, Statutes of 1995 but were not deleted from the relief from penalty authority in Section 8877.

Comments:

This proposal simply deletes the reference to the penalty for failure to secure a use fuel tax permit and penalty for late prepayment formerly contained in Sections 8701 and 8756.5, respectively.

Sections 30103.5 and 30188**Current Law:**

Under existing law, Section 30103.5 of the Cigarette and Tobacco Products Tax Law provides that the cigarette taxes do not apply to the sale or transfer of untaxed cigarettes to law enforcement agencies for use in criminal investigations. However, there is no similar provision to exempt the sale or transfer of tobacco products to law enforcement agencies.

Under existing law, Section 30188 of the Revenue and Taxation Code requires every wholesaler on or before the 25th day of each month to file a report with the Board detailing its inventory, purchases, and sales of cigarettes during the preceding month. The current statute, however, does not specifically require a wholesaler to include the same information in regards to their tobacco products, including cigars, pipe tobacco, chewing tobacco, and snuff. The information collected by the Board is used to detect any unusually large buying or selling patterns that could indicate the nonpayment or underreporting of a tax liability. The report is also used to reconcile sales amounts contained in the books and records of a distributor from whom a wholesaler has reported purchases.

Comments:

This proposal would simply add conforming references to tobacco products in order for the Board to administer the excise tax on both products in a consistent manner. Specifically, this proposal would:

- Allow law enforcement agencies to obtain tobacco products for use in their investigations without incurring an excise tax liability.
- Clarify that a wholesaler is required to report its monthly inventory, purchases, and sales of tobacco products. Since wholesalers are currently complying with this requirement, this proposal would not add any new or additional reporting compliance burdens on them, but simply codify the current practice.

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Sections 30436**Current Law:**

Under current law, Section 30436 authorizes the Board to seize cigarettes not contained in packages to which the California cigarette tax stamp is affixed or tobacco products upon which the surtax has not been paid, if the seller is not authorized to sell such unstamped cigarettes or ex-tax tobacco products. Upon seizure, those items become the property of the state.

Current Section 30163 of the Cigarette and Tobacco Products Tax Law prohibits the affixing of any stamp or meter impression to any package of cigarettes unless that package complies with all requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sections 1331-1341) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States. This section requires the Board to revoke the license of any distributor who affixes a stamp or meter impression upon these “export only” cigarettes.

Background:

The current restriction on the distribution of “export only” cigarettes was amended into Section 30163 last year by Senate Bill 2134 (Ch. 292) and sponsored by the California Distributors Association. The sponsor’s asserted that these “export only” cigarettes, which are marketed by American cigarette manufacturers for foreign markets, were smuggled back into California and have become associated with export fraud, smuggling, and organized crime. Their bill was intended to deter the increasing volume of contraband cigarettes sold in California.

Comments:

This provision, sponsored by the California Distributors Association, is intended to clarify the Board’s authority to seize the cigarettes targeted last year by SB 2134. This provision would authorize the Board to seize cigarettes which are stamped, but are sold in defiance of the restriction on the selling of “export only” cigarettes in California. This change would allow the Board to enforce the current restriction on “export only” cigarettes in a manner consistent with the seizure provisions on all other illegally distributed cigarettes in California.

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Sections 42886 and 42886.1**Current Law:**

Under the current law, a tire recycling fee of \$0.25 per tire is imposed on the purchase of each tire from a retail seller of new tires. All tire-recycling fees are due and payable quarterly on or before the 15th day following the end of each calendar quarter.

During the 1997 calendar year, the Board processed 8,108 tire-recycling fee returns. Over 94% of the returns filed (7,645) were from retailers who reported an average monthly fee liability of less than \$75 per month, or a yearly average of less than \$1,000. Requiring those 7,645 feepayers to file quarterly is not cost effective for either the State or the feepayers.

Comments:

This proposal would allow the Board to require a tire recycling feepayer to report and pay their fees on other than, but not sooner than, a quarterly basis. By changing these accounts from a quarterly to annual reporting basis, there would be a significant decrease in the number of quarterly returns processed. For feepayers this change would reduce their compliance burden. Without any impact on the amount of funds collected for the tire recycling program, the Board would benefit from a reduction in delinquency problems and a reduction in the number of returns processed. The lengthening of the reporting period for low dollar accounts would reduce overall delinquencies processed by an estimated 93% per quarter.

It is not intended to put large feepayers on any other reporting basis than quarterly. This proposal would provide a sensible, cost-effective return reporting basis for all feepayers under the tire recycling fee programs. The proposal would provide the Board the administrative discretion necessary to determine how often a tire retailer should report and pay the fee to the Board, while having little or no impact on the revenue flow for the tire recycling program.

Section 43010.1 and 43011.1**Current Law:**

Under existing law, the Board administers and collects the Occupational Lead Poisoning Prevention Fee pursuant to Section 43056 of the Revenue and Taxation Code, and administers and collects the Childhood Lead Poisoning Prevention Fee pursuant to Section 43057. The statutory provisions the Board uses to collect both fees are the same provisions the Board uses to collect the various hazardous waste fees (Part 22, Division 2, of the Revenue and Taxation Code, Sections 43001-43651). The hazardous waste fees administered and collected by the Board are utilized to fund regulatory activities of the Department of Toxic Substances Control, while the Occupational Lead Poisoning Prevention Fee and Childhood Lead Poisoning Prevention Fees are utilized to fund regulatory activities of the Department of Health Services.

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Current Section 43010 defines “department” to mean the Department of Toxic Substances Control and “director” to mean the Director of Toxic Substances Control. However, for purposes of the fee administered under Section 43056 (the Occupational Lead Poisoning Prevention Fee), “department” means the State Department of Health Services. A conforming reference in Section 43011.1 clarifies that, “director” means the State Director of Health Services for purposes of the Occupational Lead Poisoning Prevention Fee.

Comments:

This proposal would simply add the correct references for “department” and “director” for the Childhood Lead Poisoning Prevention Fee. This change is necessary to clarify that references to “department” and “director” throughout Part 22 of Division 2 mean the Department of Health Services and the director of that Department for purposes of the Childhood Lead Poisoning Prevention Fee.

Section 50159

Current Law:

Under existing law, a fee of \$0.012 per gallon is imposed upon each gallon of petroleum placed in an owner’s underground storage tank during the quarterly reporting period. A number of tank owners do not operate the underground tanks themselves, but instead lease their tanks and other property to lessees who will use the tanks or operate a business using the property so leased. In a small number of cases where the operator has not paid the fee or refuses to transfer credit for the fee to the uninformed owner, the owner is liable to pay the fee and applicable interest and penalty to the Board.

Current Section 50159 of the Revenue and Taxation Code authorizes the Board to release otherwise confidential information, such as the information contained in the operator’s pre-paid sales tax schedule, to the tank owner. However, the Board is not authorized to release otherwise confidential information concerning the tank operator’s fuel supplier, and, thus, is not able to give the tank owner the benefit of information gleaned from the pre-paid sales tax reconciliation process.

In determining the number of gallons a tank operator has placed into an underground storage tank during a reporting period, Board staff utilizes information the tank operator reports on a schedule attached to their sales and use tax return. On this schedule, the tank operator reports the number of gallons of fuel purchased from suppliers and takes credit for the pre-paid sales tax reimbursement it paid to those suppliers. In order to validate the information reported by the tank operator on their pre-paid sales tax schedule, Board staff reconciles the amounts reported on that schedule with amounts reported by the suppliers. Using this reconciliation process, Board staff is able to obtain reliable information concerning the number of gallons of petroleum placed in an underground storage tank. Any discrepancies in the number of reported gallons of petroleum placed in a tank is then used by the Board to assess additional fees or refund overstated amounts to the tank owner.

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In the past, gas station owners that leased their stations to others to operate have complained that they had no way of knowing how many gallons of petroleum were placed in the tanks at the stations, and, therefore, no way of accurately reporting and paying the fee. In 1994, the Board sponsored a legislative change to permit it to disclose otherwise confidential information obtained from the lessee or operator of an underground storage tank to the tank owner, since sales tax information obtained from the lessee or operator can be very useful in determining how many gallons of petroleum were placed in a tank. That proposal became law effective January 1, 1995 (Ch. 1223, 1994).

Comments:

This proposal would amend the current statute to authorize the Board to release otherwise confidential information concerning the tank operator's suppliers, thus enabling the tank owner to accurately report and pay the underground storage tank fee. This proposal limits the release of information to only that information which is necessary for the assessment, administration, and verification of the underground storage tank fee. A tank operator's petroleum deliveries and purchases could not be released to a competitor and would be used strictly to assist the tank owner in fulfilling their reporting and payment requirements under the law.

This proposal would rectify an awkward situation in which a liable feepayer is not allowed to examine information which is being used by the Board to establish a fee liability against them. This change would enable the Board to administer the underground tank fee program in a more fair and equitable manner and allow those responsible for a tax debt to be fully informed of the evidence and reasons for that tax debt.

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COST ESTIMATE:

Allowing the Board to reduce the frequency of reporting and paying the tire recycling fee by a select number of small feepayers could result in minor cost savings related to the processing of returns and payments. Any such cost savings would be reflected in the cost reimbursement contract negotiated between the Board and the Integrated Waste Management Board.

The workload changes associated with the other provisions of this bill would be absorbable costs associated with advising and answering inquiries from the public, and informing Board staff.

REVENUE ESTIMATE:

The proposal contained in this bill would not impact the revenues collected by the Board.

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